

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

CAPITOL RECORDS, LLC, a Delaware limited liability company; CAROLINE RECORDS, INC., a New York Corporation; VIRGIN RECORDS AMERICA, INC., a California Corporation,

Plaintiffs,

v.

VIMEO, LLC d/b/a VIMEO.COM, a Delaware Limited Liability Company; CONNECTED VENTURES, LLC, a Delaware Limited Liability Company, and DOES 1-20, inclusive,

Defendants.

---

EMI BLACKWOOD MUSIC, INC., a Connecticut Corporation; EMI APRIL MUSIC, INC., a Connecticut Corporation; EMI VIRGIN MUSIC, INC., a New York Corporation; COLGEMS-EMI MUSIC, INC., a Delaware Corporation; EMI VIRGIN SONGS, INC., a New York Corporation; EMI GOLD HORIZON MUSIC CORP., a New York Corporation; EMI U CATALOG, INC., a New York Corporation; EMI UNART CATALOG INC., a New York Corporation; JOBETE MUSIC CO., INC., a Michigan Corporation; and STONE DIAMOND MUSIC CORPORATION, a Michigan Corporation,

Plaintiffs,

v.

VIMEO, LLC d/b/a VIMEO.COM, a Delaware Limited Liability Company; CONNECTED VENTURES, LLC, a Delaware Limited Liability Company, and DOES 1-20, inclusive,

Defendants.

---

CASE NOS. 09 CV 10101 (RA)  
09 CV 10105 (RA)

ECF Case

**MOTION OF NONPARTY THE  
INTERNET ASSOCIATION FOR  
LEAVE TO FILE *AMICUS CURIAE*  
BRIEF IN SUPPORT OF  
DEFENDANT**

**TO THE COURT AND ALL PARTIES AND THEIR COUNSEL OF RECORD:**

Nonparty The Internet Association (“IA”) respectfully moves for leave of Court to file the accompanying *amicus curiae* brief in the above-captioned case in support of Defendants. Defendants have consented to the filing of this brief. By e-mail on December 5, 2012, Plaintiffs indicated that they do not consent to the filing of this brief. Counsel for IA requested that consent on November 26, 2012.

The Internet Association is a nonprofit trade organization which represents the interests of America’s leading Internet companies and their global community of users. The Internet Association is dedicated to advancing public policy solutions to strengthen and protect Internet freedom, foster innovation and economic growth and empower users. The Internet Association’s membership includes Amazon.com, AOL, eBay, Expedia, Facebook, Google, IAC, LinkedIn, Monster Worldwide, Rackspace, salesforce.com, TripAdvisor, Yahoo!, and Zynga.<sup>1</sup>

The Internet Association in the attached brief seeks to address five areas in which Plaintiffs here seek to undermine the DMCA safe harbor scheme. First, Plaintiffs misconstrue the “red flag knowledge” element of the statute. Second, they disregard binding Second Circuit authority with respect to the “control” element of the statute. Third, they attempt to impose an unduly rigid “repeat infringer” obligation on Vimeo. Fourth, Plaintiffs erroneously contend that the DMCA safe harbors provide no protection against inducement claims and claims relating to pre-1972 sound recordings. Finally, Plaintiffs attempt to exclude services that facilitate “downloads” (as distinct from “streaming”) from the scope of the safe harbor. Were any of these

---

<sup>1</sup> One of the members of The Internet Association, IAC, is the parent company of Defendant Vimeo. IAC took no part in the preparation of this brief and made no monetary contribution for the purpose of funding this brief’s preparation. No party prepared this brief in whole or in part, or made any monetary contribution for the purpose of funding this brief’s preparation.

arguments accepted, they would have far-reaching consequences for Internet companies and users.

The Internet Association recognizes that *amicus* briefs are not routinely filed in connection with summary judgment proceedings in the District Court. However, The Internet Association believes that the arguments raised by Plaintiffs warrant a response on behalf of participants in a major industry that could be negatively affected by the judicial endorsement of those arguments. In addition, the submission of this brief two weeks in advance of the date for Plaintiffs' reply provides ample time for Plaintiffs to review it and include any response in their reply papers. Because the pleadings on the cross-motions for summary judgment have not been posted to the court's ECF system, the preparation of this brief was delayed, and an earlier filing was not feasible.

For the foregoing reasons and based on the documents submitted herewith, The Internet Association respectfully requests that the Court grant the motion to file the accompanying *amicus curiae* brief.

DATED: December 7, 2012  
San Francisco, California

Respectfully submitted,  
  
DURIE TANGRI LLP

By: /s/ Johanna Calabria  
Johanna Calabria (JC-3915)  
jcalabria@durietangri.com  
217 Leidesdorff Street  
San Francisco, CA 94111  
Telephone: 415-362-6666

*Of Counsel:*  
Joseph C. Gratz  
jgratz@durietangri.com  
217 Leidesdorff Street  
San Francisco, CA 94111  
Telephone: 415-362-6666

Attorneys for Non-Party  
The Internet Association